

STATE OF MICHIGAN
IN THE SUPREME COURT

LINDA C. HODGE,

Plaintiff-Appellant,

-vs-

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

Supreme Court No. _____

Court of Appeals No. 308723

pull up
2-25-14

Wayne 10-012159-AV
B. Sullivan

OK

Richard E. Shaw (P33521)
Attorney for Plaintiff-Appellant Hodge
1425 Ford Building
615 Griswold Street
Detroit, Michigan 48226
(313) 963-1301

HEWSON & VAN HELLEMONT, P.C.
James F. Hewson (P27124)
Stacey L. Heinonen (P55635)
Attorneys for Defendant-Appellee
25900 Greenfield Rd., Ste. 326
Oak Park, MI 48237
(248) 968-5200

149043

APR

4/29

1343458

APPLICATION FOR LEAVE TO APPEAL

APPENDIX (under separate cover)

FILED

APR - 4 2014

LARRY S. ROYSTER
CLERK
MICHIGAN SUPREME COURT

related to

149041

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
INDEX OF AUTHORITIES.....	3
STATEMENT REGARDING (1) PROCEDURAL POSTURE, (2) DECISION APPEALED FROM, (3) JURISDICTION, (4) GROUNDS FOR RELIEF, AND (5) RELIEF SOUGHT	4
STATEMENT OF THE ISSUE.....	7
STATEMENT OF FACTS AND PROCEDURAL POSTURE	8
PRESERVATION OF ERROR AND STANDARD OF REVIEW	8
LAW AND ARGUMENT	9
ISSUE	9
AT TRIAL, PLAINTIFF HAD MORE EVIDENCE THAN WAS NECESSARY TO DEMONSTRATE DAMAGES OF \$25,000, THE JURISDICTIONAL LIMIT. THE DISTRICT COURT HELD THAT IT HAD JURISDICTION TO TRY THE CASE AND DENIED DEFENDANT’S MOTION TO TRANSFER THE ACTION TO CIRCUIT COURT. THE TRIAL COURT POSSESSED JURISDICTION TO ENTER A JUDGMENT NOT TO EXCEED \$25,000.....	9
RELIEF REQUESTED.....	9

INDEX OF AUTHORITIES

Cases

Moody v Home Owners Insurance Co., __ Mich.App. __, __ N.W.2d __ (2014) 4, 6

Rules

MCR 7.301(A)(2) 4

**STATEMENT REGARDING (1) PROCEDURAL POSTURE, (2) DECISION
APPEALED FROM, (3) JURISDICTION, (4) GROUNDS FOR RELIEF,
AND (5) RELIEF SOUGHT**

Procedural Posture

This 1st-party, no-fault action was tried in the 36th District Court, resulting in a verdict in favor Plaintiff-Appellant (Plaintiff), followed by judgment. (District Court Judgment, 10/1/10, Ex. D) Defendant-Appellee (Defendant) filed a claim of appeal to the Wayne Circuit Court; the circuit-appellate court reversed the judgment on the basis that the amount in controversy exceeded \$25,000 regardless of the prayer for relief not to exceed that sum. (Order Granting Defendant's Appeal from Judgment and Reversing Judgment of Trial, 2/1/2012, Ex. G)

Plaintiff filed a timely application for leave to appeal to the Court of Appeals that was denied. However, this Court entered an order directing the Court of Appeals to hear the appeal. (Order, 3/4/2013)

The Court of Appeals affirmed the circuit-appellate court order on February 25, 2014, *sub nom Moody v Home Owners Insurance Co.*, __ Mich.App. __, __ N.W.2d __ (2014) (Ex. H); Court of Appeals Docket Entries, (Ex. A).

Order Appealed From

Plaintiff appeals from the Court of Appeals opinion. *Moody v Home Owners Insurance Co.*, __ Mich.App. __, __ N.W.2d __ (2014) (Ex. H).

Jurisdiction

This Court has jurisdiction to review this matter. MCR 7.301(A)(2).

Grounds for Relief

The issue raised by this application for leave to appeal involves legal principles of major significance to the state's jurisprudence. **This is an issue of first impression.** No prior appellate decision from the Court of Appeals holds that the district court is divested of jurisdiction, if evidence produced for the jury's consideration is more than the jurisdictional limit. The circuit-appellate court's holding, affirmed by the Court of Appeals, is without precedent. In all other cases, a judgment is entered for the Plaintiff in the amount of \$25,000, notwithstanding that the plaintiff could present evidence for and request damages greater than that amount in a court of unlimited jurisdiction.

Although this litigation involved a 1st-party, no-fault claim, creditors routinely bring suit in the district court to expeditiously litigate their claim(s), foregoing some portion of their claim. The lower appellate court's decision bars a creditor from this choice. The lower court decision has ramifications well beyond the scope of a 1st-party, no-fault action.

The decision below is clearly erroneous and will cause material injustice. That the decision is clearly erroneous is demonstrated in the legal argument *infra*, where it is seen that the decision below contradicted more than a dozen prior decisions.

The material injustice is that Plaintiff's claim for insurance proceeds arises from an accident in 2005. Relying upon decades of established law, Plaintiff filed his complaint in the district court, acknowledging that she is limited to recovery of damages not to exceed \$25,000. Plaintiff prevailed, resulting in judgment in her favor for \$25,000. (District Court Judgment, 10/1/2010, Ex. D) Now, upon the lower appellate court's decision, Plaintiff is ordered to the circuit court for a new trial. As of 2014, there is no end in sight with regard to this claim that shall not exceed \$25,000.

Relief Sought

Plaintiff requests that this Court reverse the opinion, *Moody v Home Owners Insurance Co.*, __ Mich.App. __, __ N.W.2d __ (2014) (Ex. H), and remand this matter to the trial court for post-trial proceedings.

STATEMENT OF THE ISSUE

AT TRIAL, PLAINTIFF HAD MORE EVIDENCE THAN WAS NECESSARY TO DEMONSTRATE DAMAGES OF \$25,000, THE JURISDICTIONAL LIMIT. THE DISTRICT COURT HELD THAT IT HAD JURISDICTION TO TRY THE CASE.

DID THE TRIAL COURT POSSESS JURISDICTION TO ENTER A JUDGMENT NOT TO EXCEED \$25,000?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Appeals answered "No."

The Wayne Circuit Court answered "No"

The trial court answered "Yes."

STATEMENT OF FACTS AND PROCEDURAL POSTURE

The Court of Appeals tersely described the facts of this case. Plaintiff acknowledges that the Court of Appeals set forth the pertinent facts in this matter. The lower appellate court wrote:

The appeal in Docket No. 308723 presents the same central legal issue as in Docket Nos. 301783 and 301784¹ regarding the district court's jurisdiction under MCL 600.8301(1). Plaintiff Linda C. Hodge brought an action in 36th District Court asserting a first-party no-fault claim and presented proof of damages far in excess of the district court's \$25,000 subject matter jurisdictional limits. The jury returned a verdict of \$85,957 against defendant State Farm Mutual Auto-mobile Insurance Company (defendant or State Farm), and on October 1, 2010, the district court entered a judgment of \$25,000 plus interest against defendant. State Farm appealed to the circuit court, which held a hearing on December 16, 2011. Judge Brian R. Sullivan reversed and issued an order on February 1, 2012 providing in pertinent part that "[t]he amount in controversy in this case was in excess of the \$25,000.00" jurisdictional limit of MCL 600.8301. The circuit court ordered that "the jury verdict and subsequent judgment ... is reversed and vacated for the reason that the court lacked jurisdiction over the subject matter because the amount in controversy exceeded the district court's jurisdictional limits contained in MCL 600.8301[.]"

PRESERVATION OF ERROR AND STANDARD OF REVIEW

Defendant raised and preserved its allegation of error as to the jurisdiction of the trial court.

¹ Docket No. 301784 is *Moody v Home Owners Insurance Co.*, *supra*; Docket No. 301783 is *Get Well Medical Treatment, Progressive Rehab Center, and Carol Reints, Inc. v Home Owners Insurance Co.*, decided *sub nom* *Moody*, *supra*.

LAW AND ARGUMENT

ISSUE

AT TRIAL, PLAINTIFF HAD MORE EVIDENCE THAN WAS NECESSARY TO DEMONSTRATE DAMAGES OF \$25,000, THE JURISDICTIONAL LIMIT. THE DISTRICT COURT HELD THAT IT HAD JURISDICTION TO TRY THE CASE AND DENIED DEFENDANT'S MOTION TO TRANSFER THE ACTION TO CIRCUIT COURT.

THE TRIAL COURT POSSESSED JURISDICTION TO ENTER A JUDGMENT NOT TO EXCEED \$25,000.

Plaintiff's argument on appeal is the same as Plaintiff Charles Moody's argument in *Moody v Home Owners Insurance Co.*, __ Mich.App. __, __ N.W.2d __ (2014) (Court of Appeals docket no. 301784, Supreme Court docket no. ____). Plaintiff relies upon the argument set forth by Appellant Moody in Issue I of his brief.

RELIEF REQUESTED

WHEREFORE, Plaintiff-Appellant Hodge herein, by and through her attorneys, respectfully prays that this Honorable Court grant her application for leave to appeal and pursuant thereto reverse the Court of Appeals Opinion and reverse the Order of the Wayne County Circuit Court on Appeal, February 1, 2012, together with costs, and remand this matter to the trial court for post-trial proceedings.

Respectfully submitted,

RICHARD E. SHAW



Richard E. Shaw (P33521)
Attorney for Plaintiff-Appellant Hodge
1425 Ford Building
615 Griswold Street
Detroit, Michigan 48226
(313) 963-1301

Dated: April 3, 2014